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APPLICATION NO.	FILING DATE	FIRST NAMED INVENTOR	ATTORNEY DOCKET NO.	CONFIRMATION NO.
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10/618,413

07/11/2003

Fred Wehling

208-017US1

6803

27791

7590

06/21/2007

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EXAMINER

KRASS, FREDERICK F

ART UNIT

PAPER NUMBER

1614

MAIL DATE

DELIVERY MODE

06/21/2007

PAPER

**Please find below and/or attached an Office communication concerning this application or proceeding.**

The time period for reply, if any, is set in the attached communication.

<b>Advisory Action</b> <b>Before the Filing of an Appeal Brief</b>	Application No.	Applicant(s)	
	10/618,413	WEHLING ET AL.	
	Examiner	Art Unit	
	Frederick Krass	1614	

**--The MAILING DATE of this communication appears on the cover sheet with the correspondence address --**

THE REPLY FILED 21 May 2007 FAILS TO PLACE THIS APPLICATION IN CONDITION FOR ALLOWANCE.

1. ☒ The reply was filed after a final rejection, but prior to or on the same day as filing a Notice of Appeal. To avoid abandonment of this application, applicant must timely file one of the following replies: (1) an amendment, affidavit, or other evidence, which places the application in condition for allowance; (2) a Notice of Appeal (with appeal fee) in compliance with 37 CFR 41.31; or (3) a Request for Continued Examination (RCE) in compliance with 37 CFR 1.114. The reply must be filed within one of the following time periods:

- a) ☐ The period for reply expires \_\_\_\_\_ months from the mailing date of the final rejection.  
b) ☒ The period for reply expires on: (1) the mailing date of this Advisory Action, or (2) the date set forth in the final rejection, whichever is later. In no event, however, will the statutory period for reply expire later than SIX MONTHS from the mailing date of the final rejection.

Examiner Note: If box 1 is checked, check either box (a) or (b). ONLY CHECK BOX (b) WHEN THE FIRST REPLY WAS FILED WITHIN TWO MONTHS OF THE FINAL REJECTION. See MPEP 706.07(f).

Extensions of time may be obtained under 37 CFR 1.136(a). The date on which the petition under 37 CFR 1.136(a) and the appropriate extension fee have been filed is the date for purposes of determining the period of extension and the corresponding amount of the fee. The appropriate extension fee under 37 CFR 1.17(a) is calculated from: (1) the expiration date of the shortened statutory period for reply originally set in the final Office action; or (2) as set forth in (b) above, if checked. Any reply received by the Office later than three months after the mailing date of the final rejection, even if timely filed, may reduce any earned patent term adjustment. See 37 CFR 1.704(b).

#### NOTICE OF APPEAL

2. ☐ The Notice of Appeal was filed on \_\_\_\_\_. A brief in compliance with 37 CFR 41.37 must be filed within two months of the date of filing the Notice of Appeal (37 CFR 41.37(a)), or any extension thereof (37 CFR 41.37(e)), to avoid dismissal of the appeal. Since a Notice of Appeal has been filed, any reply must be filed within the time period set forth in 37 CFR 41.37(a).

#### AMENDMENTS

3. ☐ The proposed amendment(s) filed after a final rejection, but prior to the date of filing a brief, will not be entered because  
(a) ☐ They raise new issues that would require further consideration and/or search (see NOTE below);  
(b) ☐ They raise the issue of new matter (see NOTE below);  
(c) ☐ They are not deemed to place the application in better form for appeal by materially reducing or simplifying the issues for appeal; and/or  
(d) ☐ They present additional claims without canceling a corresponding number of finally rejected claims.

NOTE: \_\_\_\_\_. (See 37 CFR 1.116 and 41.33(a)).


4. ☐ The amendments are not in compliance with 37 CFR 1.121. See attached Notice of Non-Compliant Amendment (PTOL-324).  
5. ☐ Applicant's reply has overcome the following rejection(s): \_\_\_\_\_.  
6. ☐ Newly proposed or amended claim(s) \_\_\_\_\_ would be allowable if submitted in a separate, timely filed amendment canceling the non-allowable claim(s).  
7. ☒ For purposes of appeal, the proposed amendment(s): a) ☐ will not be entered, or b) ☐ will be entered and an explanation of how the new or amended claims would be rejected is provided below or appended.  
The status of the claim(s) is (or will be) as follows:  
Claim(s) allowed: \_\_\_\_\_.  
Claim(s) objected to: \_\_\_\_\_.  
Claim(s) rejected: 1-18 and 21-24.  
Claim(s) withdrawn from consideration: \_\_\_\_\_.

#### AFFIDAVIT OR OTHER EVIDENCE

8. ☐ The affidavit or other evidence filed after a final action, but before or on the date of filing a Notice of Appeal will not be entered because applicant failed to provide a showing of good and sufficient reasons why the affidavit or other evidence is necessary and was not earlier presented. See 37 CFR 1.116(e).  
9. ☐ The affidavit or other evidence filed after the date of filing a Notice of Appeal, but prior to the date of filing a brief, will not be entered because the affidavit or other evidence failed to overcome all rejections under appeal and/or appellant fails to provide a showing of good and sufficient reasons why it is necessary and was not earlier presented. See 37 CFR 41.33(d)(1).  
10. ☐ The affidavit or other evidence is entered. An explanation of the status of the claims after entry is below or attached.

#### REQUEST FOR RECONSIDERATION/OTHER

11. ☒ The request for reconsideration has been considered but does NOT place the application in condition for allowance because:  
See Continuation Sheet.  
12. ☐ Note the attached Information Disclosure Statement(s). (PTO/SB/08) Paper No(s). \_\_\_\_\_.  
13. ☐ Other: \_\_\_\_\_.

  
Frederick Krass  
Primary Examiner  
Art Unit: 1614

Continuation of 11. does NOT place the application in condition for allowance because:

1) Regarding the position set forth by Applicant in footnote 1 at page 2 of the Remarks, the examiner has "considered" applicant's statement that bovine cartilage is more palatable than other types, but since no accompanying evidence has been presented he is in no position to assign any probative value thereto. This is consistent with the settled principle that mere conclusory statements in a specification, when unsupported by objective supporting evidence, are generally given little weight in determining patentability. See, e.g., IN RE GREENFIELD, 197 USPQ 227, 229 (CCPA 1978).

2) Applicant's arguments regarding palatability would appear to be limited within the context of administration to humans. The instant claims, however, do not require administration to humans. Moreover, and contrary to applicant's position as set forth at page 3 of the Remarks, the Philips disclosure is not limited to administration to humans; note the use of the general term "mammals" in the abstract and claims of same. Accordingly, reliance on a reference disclosing veterinary products is not impermissible in this fact situation.

3) The examiner does not agree with applicant's characterization of the Philips disclosure at page 4 of the Remarks. While it is true that Philips et al do not use the term "nutritional supplements" per se, the prior art's directive to "strengthen bones" would appear to reasonably and implicitly suggest same. Furthermore, the relevancy of applicant's argument that "[N]othing in Fox teaches or suggests including more calcium lactate than calcium carbonate in an effervescent composition" is not seen given that claim 7 does not require such an excess. Merely using a known calcium source for effervescent compositions (calcium lactate as taught by Fox) in known effervescent compositions containing calcium (those of Philips) is viewed as obvious on its face. This position is consistent with the reasoning of established precedent; see MPEP 2144.07.

4) The examiner also does not agree with applicant's argument that Little et al's desire to balance physiological magnesium is "of no moment" since the reference fails to mention chondroitin and glucosamine specifically. (Remarks, page 7, first paragraph). Little et al state that magnesium is added "on a rational basis related to the basal requirements of the body" (column 1, lines 23-25). Those "basal requirements" would be present in the primary reference subjects as well.